

## MINUTES

### **WARRICK COUNTY AREA PLAN COMMISSION**

Regular meeting held in Commissioners Meeting Room,

Third Floor, Court House, Boonville, Indiana 47601

Monday, May 13, 2013, 6:00 PM

**MEMBERS PRESENT:** Guy Gentry, President, Jeff Valiant, Vice President, Mike Moesner, Amanda Mosiman, Brad Overton, Richard Reid, and Jeff Willis.

Also present were Sherri Rector, Executive Director, Morrie Doll, Attorney, Sheila Lacer and Molly MacGregor, Staff.

**MEMBERS ABSENT:** None

Roll call was taken and a quorum declared present.

**PLEDGE OF ALLEGIANCE:** A moment of silence was held followed by the Pledge of Allegiance.

**MINUTES:** Upon a motion made by Mike Moesner and seconded by Richard Reid, the Minutes of the last regular meeting held April 8, 2013, were unanimously approved as circulated.

The President explained the Rules of Procedure. He stated they are going to deviate from the published agenda and hear the other business first and then pause the meeting in order to hold their Executive Session. He said after the Executive Session they would resume the regular meeting.

### **OTHER BUSINESS:**

**Formal Complaint** ~ Wendall and Nancy West ~ 2722 Walnut Lane ~ OWNER OF RECORD: Wendall and Nancy West~ Junk Salvage Yard in an "A" Agriculture zoning district. Cease and Desist Notice and Notice to Appear sent on March 27, 2013. *On April 8, 2013, were given 30 days to bring property into compliance and 60 days to remove mobile home.*

Nancy West was present.

The President called for a staff report.

Mrs. Rector stated Mr. Gentry went out to the property last week and took pictures. Mrs. Rector said he reported that some of the items have been cleaned up. She said Mrs. West has telephoned the office to request additional time to clean up the property.

Mrs. West said the problem was that they have had so much rain.

Mr. Gentry said you can see some of it has been cleaned up, and you can see in the pictures tracks in the mud where a truck has been back there along the trailer doing some things.

Mrs. West said they have hauled off 6 loads of trash and they still have another load sitting down there but it has rained so much over the weekend, they were wading in water that comes off all of the property around them because they are the lowest property around there and they get everybody's runoff. Mrs. West said they received permission from the fire department to burn the trailer, which they did, but they haven't been able to get down there to tear it up because of all the rain. Mrs. West added they have a couple down there today getting it tore up, and since the roof caved in on it they may have to burn some more of the flooring before they can get the frame taken away. She said there are some other things there that they are still working on but it is just taking some time.

Mr. Gentry said it appears that they are ahead of schedule on the trailer. He asked how long she thinks it will take to get the rest of the stuff.

Mrs. West said that she would like another 30 days.

Mike Moesner said it looks like they have made a good bit of progress.

Mr. Gentry said yes, it looks better.

Mrs. West said her neighbor across the road that was here in court said he was very satisfied with the way things were going.

Mrs. Rector said it would be kind of hard to get that trailer out of there right now.

Mrs. West said there are trees that have grown up into the tongue and they couldn't pull them loose, they tried chainsaws and everything and it wouldn't pull out so she guesses they will have to build a fire around that stump to get the frame out.

Mike Moesner said he could sympathize and thinks they could go another 30 days based on the progress they are making. He said he has no problem with that.

Mike Moesner made a motion to allow them another 30 days to come into compliance, or until the next meeting.

Mrs. Rector said the next meeting is June 10<sup>th</sup>. She asked if the Board wanted another inspection done on June 7<sup>th</sup>.

Mike Moesner said yes, that would be his motion.

The motion was seconded by Amanda Mosiman and unanimously carried.

**Formal Complaint** ~ Elizabeth Ison (Gary Crickmer)~ 966 Russell Road ~Alleged Junk/Salvage Yard and operation of trash sorting business in an “A” Agriculture zoning district. Con’t from April 8, 2013 to determine if they are no longer in violation.

Gary Crickmer was present.

The President called for a staff report.

Mrs. Rector said Guy went out to the property last Thursday. She said we got a phone call from the person who filed the complaint originally and kept coming to the meetings, he said that they are still running the business out of the house and they are still bringing stuff to the house and unloading it, going through it, and taking it off. Mrs. Rector said when the man called he said there was a trailer out there at that time so she had Guy, who was in the area, go out there.

Guy Gentry said when he went out there was a white dodge truck with a red enclosed trailer sitting out by the road way, not in front of the garage but stopped by there. He said he guessed the person driving it was down in front of the garage. He stated there was another flatbed trailer down in front of the garage with maybe a dozen small items that were covered with tarps. He said the trailer was parked down there with nothing hooked to it or anything, there was a white box there, and a guy was talking on his cell phone. He added there was no other activity. Mr. Gentry stated he drove up to the house and turned around and came back, he didn’t have a camera with him so he didn’t take any pictures or anything but there wasn’t really anything to take pictures of.

Mr. Crickmer said he could tell the Board what the activity the man was referring to. He said he can go in and out of his pole barn and garage because he has the new place so the activity has not been moving anything in there, it has been moving stuff out of there to take to the new place. Mr. Crickmer said the trailer sitting there; they have been using it, stacking it up, and taking it out of there.

Mr. Gentry said he went by there today and the white box is not there. He said there was a car for sale, but there was nothing else sitting outside. He said the dumpster was still there, but it wasn’t full or anything, and there was trailer parked just to the south of the garage backed in along the side with maybe a couple of boards lying flat on it. Mr. Gentry said there was nothing there today that he saw. He stated as far as activity, he saw the one guy who could have been there loading stuff up and taking it out.

Amanda Mosiman asked Mr. Gentry if there was anything in violation.

Mr. Gentry said nothing was in violation that he could see, as long as he is not bringing stuff in and out. He said if he is it was all inside so he didn’t see anything.

Mrs. Rector said that they need a motion to determine that he is no longer in violation.

Mike Moesner made a motion to close the case and remove it from the agenda.

The motion was seconded by Richard Reid and unanimously carried.

**VECTREN EASEMENT** ~ Perry Cloyd, PS, Manager, Encroachment Program ~ 200 S. Plank Road ~ Structure in easement without permit. *Con't from December 17, 2012 & January 13, 2013, meetings. Removed from agenda until requested to be placed back.*

Perry Cloyd, Manager of Encroachment Program for Vectren Energy Delivery was present. He stated that he brought a letter for each of the Board members that states what he is looking for. Mr. Cloyd said in December they found an addition to a permitted barn that houses recreational vehicles. He said the addition was not permitted; it encroaches into Vectren's easement. He said our easement prohibits structures; the Ordinance primarily prohibits structures in easements. He said previous conversation was to touch base and get the feel of the Commission before he advances on this issue. He said what he left here with is the understanding that they had a consensus that if Vectren needed to go to court to have this matter resolved, the Commission would be willing to partner with us in that effort. Mr. Cloyd said he presented this information to the property owner, and he has primarily admitted that he is in violation, he thought that his builder was going to get a building permit and there is no record of it. Mr. Cloyd said the property owner has basically admitted that he is in violation of the easement and of the ordinance. Mr. Cloyd said the owner and his surveyor have proposed the Hold Harmless agreement, and he emailed that in January so they would have a chance to look at it. Mr. Cloyd said Vectren is not in a position to execute or support a hold harmless agreement, the letter states it is setting a bad precedent, it prohibits them of the rights they purchased, it threatens their facilities, and we think it is not in the best interest of the safety of the public. He said part of this follow up is he is asking for a response on how the Commission feels. He doesn't know if they have done a hold harmless before, or if that is even an option to consider. Mr. Cloyd said in addition to that he would like to know what the best way to proceed would be.

Attorney Doll said this Board has committed hold harmless agreements, but usually not after the fact. He said usually before the fact where they have had driveway limitations that preclude fire trucks and ambulances from being able to get to certain areas, we have executed approval of their buildings in conjunction with a hold harmless agreement that says the developer knows these existing circumstances may preclude fire trucks from getting to their property.

Mrs. Rector stated that they have never approved a hold harmless after the fact. She said she knew the Board of Zoning Appeals may have approved a variance to allow a structure in an easement only when there was a letter from all utility companies that it was not being used and they had no objections.

Attorney Doll said the hold harmless agreement doesn't affect the Warrick County ordinance, so they have not been made a party of this hold harmless agreement. He stated he would not be able to recommend this agreement because it does not involve us.

Mrs. Rector asked about Mr. Cloyd's question of the Commission joining Vectren in a proceeding.

Attorney Doll said that is a policy decision that this Board has to decide whether to go to court and incur the cost of litigating this at the tax payers' expense. He said it is in technical violation of the Ordinance and it is subject to a court requiring it to be corrected.

Guy Gentry said he does not see the Boards involvement in this case. He added that if they had come to us and we granted them a permit it would have been outside of the easement, and if they erroneously built it within the area then it would be between the two parties, which is a civil matter. He stated that they did not come to us and get a permit, grant it they are in violation of that, but it's done and it is in the wrong place, had they come in we would have checked that. He added that he sees it as a civil case between the homeowner and Vectren, and that taxpayer dollars should not get involved.

Mike Moesner asked Mr. Cloyd about previous experiences with these types of cases and what have they done before.

Mr. Cloyd stated that they would send the property owner a letter, they would give them probably 60 days to remove the structure, if it is not removed in 60 days, the letter would generically say that they will take further action. Mr. Cloyd added that he would defer to their legal department as to what they want that legal action to be. He said there may be a complaint filed that it is violation of the ordinance, and that is part of the follow up that he wanted to talk about. Mr. Cloyd said he doesn't think anybody wants this to go to court. He said that his initial reaction is to file a complaint that it's in violation and try to have people come here and report on progress and activity. He added that he can't say that for sure, he would have to defer that to their legal department, but typically when they send a letter stating that there is a problem, it's in violation and something needs to be done, then it gets done.

Attorney Doll said unfortunately, in our ordinance, article XXI sec. I, makes enforcement of our ordinance exclusively within the provision of the Executive Director of the Area Plan Commission, and then it talks about the ability to go to court, and remedies that are available there. Attorney Doll stated our ordinance does not have a third party enforcement clause, so as consequence to that if Vectren does try to enforce its rights, they wouldn't be suing under their ordinance, they'd be filing a trespass or violation of their right-of-way agreement as a civil matter in our circuit or superior court. Attorney Doll said they are welcome to look at our ordinance, it is on the internet, and see if they disagree with his opinion.

Mrs. Rector said she knows that one time she was subpoenaed to federal court over someone building a patio in a Marathon easement. She said she was subpoenaed as a witness, or to show that they did not give a permit, but when she got there the Judge said that she had nothing to do with the encroachment of the easement, that it was between them and he would not allow her to testify.

Mr. Cloyd said that was fine, the biggest reason that he has been here a couple times is to make sure that they communicate. He said he does not want to be doing something in the county and they be blindsided by it, and then they are finding out after the fact that there is a non-permitted building. Mr. Cloyd said they have the ability and resources to move ahead; he's just trying to make sure everything is out in the open.

Mike Moesner said that he agrees with what the President said. He said they did it without the Boards knowledge so the issue is between Vectren and the homeowner. Mike added that he cannot see spending tax payer money in something that is detrimental to Vectrens easement.

Mr. Cloyd said that is fine. He said this being in violation of a zoning ordinance is a first of probably many for him, so this gets everybody on an open door policy so he knows where they stand.

Mrs. Rector said she is glad that she has met him and that he is taking care of his easements. She said in site review the other day she met some ladies who had a meets and bounds description out in the county, but you could see utility poles down through there on the aerial so she gave them his number to call him and find out what the easements are because we have no record of those. Mrs. Rector said it is helpful that she knows him and they can have somebody that they can contact. She said if it wasn't for the aerials they wouldn't have known the easement was there.

Guy Gentry said yes, we just saw the poles in the aerial going through the field.

Mr. Cloyd said they are in the same position as he is; the reality is that we cannot have somebody in our easements 24/7. He said we do have routine inspections of our poles and gas facilities. He said he thinks this was discovered in a helicopter fly over. Mr. Cloyd said he just really wanted to be sure that he has communications open. He said he is hearing the same thing lawsuit related, but that is really out of his area. He said he will contact the owner; he wanted the Board to be aware that he is moving forward on the issue. Mr. Cloyd said he thinks this was their attempt to allow the structure to stay and we prohibit structures for a reason, it's a transmission electric line. He said he had another lady in Newburgh that had a building under a transmission line and she said "we've been on top of that building many many times and nothing has ever happened," he replied "you got lucky." Mr. Cloyd said he would assume that if they would have just jumped into this one way or another the Board would have heard about it, so at least he'd rather they hear it from him.

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Upon a motion by the President, seconded by Jeff Willis and unanimously carried the meeting was suspended at 6:25 pm for the Executive Session.

The meeting resumed at 7:10 p.m.

## **AMENDING ORDINANCES TO THE SUBDIVISION CONTROL ORDINANCE**

*Advertised in the Boonville Standard May 2, 2013.*

### **(1.) AN ORDINANCE TO AMEND ARTICLE III A: PROCEDURES FOR SUBMISSION OF “MAJOR” SUBDIVISIONS SECTION 3 NOTICE OF PUBLIC HEARING (MAJOR SUBDIVISION) SUBSECTION (1) a) OF THE SUBDIVISION CONTROL ORDINANCE IN EFFECT FOR WARRICK COUNTY, INDIANA**

The purpose of this ordinance is to add “staff shall review the application for technical conformity with the standards fixed in the Subdivision Control Ordinance”. Indiana Code.

Mrs. Rector said this first one added in the first sentence according to Indiana Code which she already reports in staff reports but she wanted it added in the ordinance per code and everything else is the same.

Attorney Doll asked if she is talking about upon receipt of an application for primary approval.

Mrs. Rector said the Plan Commission staff reviews the plat and says it is in technical conformity. She said that was not in the ordinance before but by code she had to report it and so she added it in there.

Amanda Mosiman asked if they have to vote on each ordinance to which Mrs. Rector said they need to vote on each one of them and make a recommendation to the County Commissioners.

Amanda Mosiman made a motion to recommend approval of the amending ordinance. The motion was seconded by Brad Overton and unanimously carried.

### **(2) AN ORDINANCE TO AMEND ALL OF ARTICLE III A PROCEDURES FOR SUBMISSION OF “MAJOR” SUBDIVISIONS SECTION 9 PRIMARY PLAT APPROVAL (MAJOR SUBDIVISION) OF THE SUBDIVISION CONTROL ORDINANCE IN EFFECT FOR WARRICK COUNTY, INDIANA.**

The purpose of this ordinance is to allow the Plan Commission to grant waivers and gives the Plan Commission the right to require a commitment in granting a waiver. Indiana Code.

Mrs. Rector said she rewrote this entire section according to Indiana Code. She said it incorporates a lot of what is currently in there, just rewritten according to the Code. She said the biggest change is new Indiana Code done in 2011 that allows the APC to waive any standards fixed in the ordinance. She said it also gives the APC the option of requiring a commitment as a condition of primary plat approval. She said new Code for commitments is another ordinance which this refers to in the zoning ordinance.

Guy Gentry asked if this is similar to Use and Development Commitments.

Mrs. Rector said it is similar and Attorney Doll needs to explain what types of commitments you can require. She said they talked some about it this afternoon and it would be like a rezoning Use and Development Commitment where they want sidewalks waived and the Board would say okay but they want a Use and Development Commitment that they are going to put a walking path in through the subdivision.

Attorney Doll said they can use them now for more things in this new ordinance. He said they can use these conditional approvals or conditions concerning any rezoning of a piece of property, concerning primary approval of the subdivision plat, concerning approval of vacating part of a plat and concerning an application for a Special Exception (Special Use), contingent uses or a Variance. He said so now conditional use is much broader. He said they can use it for a great many things they previously couldn't. He said the Statute talks about the timing of these conditions; they can make them permanent, make them run just with the person or if they record them, make them run with the land forever. He said they can make them expire in a specific time or if a certain event happens. He said this all in the section of IC 1015. Attorney Doll said what he and Mrs. Rector were talking about today is what a condition that you would require is.

Mrs. Rector said it is a commitment.

Attorney Doll said it is a condition a commitment is...he said there are two cases that deal with this in Indiana, one in 2007 and one in 2006. He said they go through with what isn't a commitment or a condition and it sort of says what it is and one cites Story Bed & Breakfast vs Brown County which is an old 2004 case. He paraphrased that in zoning terminology if a legislative body imposes the restriction then it is a condition but if it is submitted by the property owner to induce rezoning to get it approved it is a commitment. He said these are conditions-it says so-as a condition to the approval.

Mrs. Rector said the new verbiage is commitments that are in there.

Attorney Doll said if they do that, if they talk about it, it says...

Mrs. Rector said they can already approve a primary plat with conditions but now you can approve it with commitments.

Attorney Doll said right, and it says though that these commitments can be offered by the owner of a parcel of property or may be required to make a commitment to the Planning Commission or the Board of Zoning Appeals. He said this sounds to him as though it is a merger of the two. He said one is it comes from the applicant...

Mrs. Rector said the statute she is referring to is the last ordinance on the agenda tonight and it specifically says "commitments; enforcement;" it doesn't say conditions it says commitments and that is what she added in.



Attorney Doll said it is the definition of a commitment that he is talking about. He said it says as a condition to the adoption of a zoning proposal the owner of a parcel of real property may be required – not offered or volunteer- may be required or allowed to make a commitment to the Plan Commission or Board of Zoning Appeals as applicable concerning the use and development of that parcel. He said since they can require it then it wouldn't be voluntary it would be their saying they will approve it only if they do this or that. He said it is going to take some time to sort through this.

Mrs. Rector said what this ordinance they are talking about right now is allowing the applicant to ask for a waiver from the new code and that the Planning Commission may require a commitment to that waiver. She said they will get to the zonings and Special Uses in a minute when they get to the last ordinance.

Attorney Doll said this is a waiver of a standard in the ordinance and he thinks it is going to make their jobs much more difficult even though it is State law.

Mrs. Rector agreed.

Attorney Doll said he thinks everyone that comes in front of them will have the opportunity to ask them to waive virtually anything in the ordinance to approve a subdivision.

Mrs. Rector said she thinks that is why it was added in there that if they do allow a waiver of some condition then they can require them to make a commitment that would take care of what they are waiving in some way.

Discussion ensued.

Jeff Willis commented they could waive a sidewalk if they would put in a walking path on every property or what have you.

Attorney Doll said and the commitment is discretionary not a requirement; it is may require not shall require. He said it is going to make their job...he thinks they are going to hear a lot more applications for the approval of subdivision where they are asking them to waive one or two of the ordinance requirements. He said the question the Board will have is what the standard they will judge by is. He said it could be arbitrary and capricious.

Mrs. Rector said previously the Commissioner did waivers but now the code specifically says it is the Planning Commission who grants waivers from the Subdivision Ordinance but in the past the Commissioners have allowed people to waive sidewalks when it was in front of an outlot; there was no home going on that lot.

Guy Gentry said and that was bad because you had to walk out on the street to get back on a sidewalk.

Mrs. Rector said but they allowed them. She said this ordinance is part of the new code and it is what the Statute says.

Jeff Willis said so now it is this Board instead of the Commissioners and it should, in theory, give it more conformity.

Attorney Doll said the Commissioners may like this change because they won't have to hear every subdivision waiver and there may be more now. He said the plats have to come before them anyway and so it will be easier for them to say they don't want to have as much frontage or direct access to the road or sidewalks.

Mrs. Rector said the ordinance says they still have to meet the requirements of the Zoning Ordinance such as lot size and things like that. She said they cannot ask for a waiver to not have to meet the "R-1A" zoning requirements. She said what she sees for waivers is sidewalks or instead of a six foot public utility easement they have a lesser one or some issue like that. She said this is the State Code, she didn't make it up.

Attorney Doll asked if this is applicable to Minor Subdivisions as well.

Mrs. Rector said it is for primary plat approval it doesn't have anything to do with Minors or Parcelizations.

Attorney Doll said so otherwise this is in technical conformity with the Indiana Code.

Mrs. Rector said that is correct, she didn't add anything to it.

Brad Overton made a motion to recommend approval of the amending ordinance. The motion was seconded by Jeff Willis. Richard Reid voted against the motion and all other members voted for the motion.

**(3) AN ORDINANCE TO AMEND EXHIBIT A: THOROUGHFARE PLAN SECTION 5  
MODIFICATION OF THE SUBDIVISION CONTROL ORDINANCE IN EFFECT FOR  
WARRICK COUNTY, INDIANA**

The purpose of this ordinance clears up that the Commissioner's may grant a modification of the thoroughfare plan; not the Subdivision Control Ordinance.

Mrs. Rector said if you look at the current ordinance it says the Commissioners may grant modifications; however, it is in the Thoroughfare Plan section of the ordinance, but it was always interpreted that the Commissioners could grant modifications of the whole ordinance but she didn't think that was the intent of it. She said Indiana Code doesn't allow them to do that now except with the Thoroughfare Plan. She said this ordinance still allows the Commissioners to grant a modification of that, period.

Brad Overton said so they are coming into technical conformity again with the code.

Mrs. Rector said they are.

Brad Overton made a motion to recommend approval to the County Commissioners of the amending ordinance. The motion was seconded by Amanda Mosiman and unanimously approved.

**AMENDING ORDINANCES TO THE COMPREHENSIVE ZONING ORDINANCE:**

*Advertised in the Boonville Standard May 2, 2013.*

**(1) AN ORDINANCE TO DELETE ARTICLE V SPECIAL USES SECTION 3 SPECIAL USE DESIGNATIONS SU-19 CHURCHES AND CHURCH-OPERATED INCIDENTAL/ACCESSORY FACILITIES (ON SAME SITE) AND RELIGIOUS FACILITIES AND FROM TABLE A SPECIAL USES BY ZONING DISTRICT OF THE COMPREHENSIVE ZONING ORDINANCE IN EFFECT FOR WARRICK COUNTY, INDIANA**

The purpose of this ordinance is to remove churches/religious facilities from requiring a Special Use. This is required by Federal Law and they can go in any zoning.

Mrs. Rector said these ordinances are for the Comprehensive Zoning Ordinance. She said this ordinance is removing religious facilities and accessory uses from requiring a Special Use. She said the Federal Law (RLUIPA) prohibits them from regulating churches and religious facilities in this manner. She said she deleted it from the Special Use list and from the table.

Brad Overton questioned the accessory facilities.

Mrs. Rector stated the heading is paraphrased and if he reads the entire ordinance it says churches and church-operated incidental/accessory facilities (one same site) and Religious Facilities.

Amanda Mosiman asked if that includes religious schools.

Attorney Doll said right now there is a case in court regarding a family who was conducting a bible study in their home and they contend they are exempt from fire regulations and all the other government requirements because they are practicing a religious event in their home. He said he doesn't know if they will win but they are suing.

Mrs. Rector said the way she understands this law is they can still require them to get an Improvement Location Permit and they still have to meet the setback requirements and obtain a commercial driveway they just don't have to have a public hearing to allow them to go on that piece of property.

Attorney Doll said he is thinking of a sign issue they had with a temple recently and if they object to the setback requirements the burden shifts to the Planning Commission to prove they have a compelling public interest to enforce the setback requirement.

Mrs. Rector said the way she read the law is the County has to prove it. Mrs. Rector said this is Federal Law.

Brad Overton made a motion to recommend approval to the County Commissioners of the amending ordinance. The motion was seconded by Jeff Valiant and unanimously carried.

**(2) AN ORDINANCE TO AMEND ARTICLE VII RECREATION AND CONSERVANCY “CON” DISTRICT SECTION 1 USE REGULATIONS BY ADDING SUBSECTION (1.1) CHURCHES AND CHURCH-OPERATED INCIDENTAL/ACCESSORY FACILITIES (ON SAME SITE) AND RELIGIOUS FACILITIES TO THE COMPREHENSIVE ZONING ORDINANCE IN EFFECT FOR WARRICK COUNTY, INDIANA**

The purpose of this ordinance is to allow churches/religious facilities in a “CON” zoning.

Mrs. Rector said the next four ordinances simply are making churches permitted uses in each zoning. She said these ordinances will allow churches in any zoning except “M-3” Solid Waste.

Guy Gentry asked if they can keep them out of the “M-3”.

Mrs. Rector said she isn’t sure but right now they are. She said the only “M-3” zoning in the County right now is the FIT Tire property and that will revert back after it is gone.

Jeff Valiant made a motion to recommend approval to the County Commissioners of this amending ordinance. The motion was seconded by Brad Overton and unanimously carried.

**(3) AN ORDINANCE TO AMEND ARTICLE IX ONE FAMILY DWELLING “R-1”, “R-1A”, “R-1B”, “R-1C”, “R-1D” DISTRICTS SECTION 1 USE REGULATIONS BY ADDING SUBSECTION (3) CHURCHES AND CHURCH-OPERATED INCIDENTAL/ACCESSORY FACILITIES (ON SAME SITE) AND RELIGIOUS FACILITIES TO THE COMPREHENSIVE ZONING ORDINANCE IN EFFECT FOR WARRICK COUNTY, INDIANA**

The purpose of this ordinance is to allow churches/religious facilities in single family dwelling zonings.

Jeff Valiant made a motion to recommend approval to the County Commissioners of this amending ordinance. The motion was seconded by Mike Moesner and unanimously carried.

**(4) AN ORDINANCE TO AMEND ARTICLE XI RESORT – “R-3” DISTRICT SECTION 1 USE REGULATIONS BY AMENDING SUBSECTION (5) CHURCH CAMPS TO CHURCHES AND CHURCH-OPERATED INCIDENTAL/ACCESSORY FACILITIES (ON SAME SITE) AND RELIGIOUS FACILITIES TO THE COMPREHENSIVE ZONING ORDINANCE IN EFFECT FOR WARRICK COUNTY, INDIANA**

The purpose of this ordinance is to allow churches/religious facilities in a resort zoning.

Jeff Valiant made a motion to recommend approval to the County Commissioners of this amending ordinance. The motion was seconded by Jeff Willis and unanimously carried.

**(5) AN ORDINANCE TO AMEND ARTICLE XII RESIDENTIAL OFFICE – “R-O” DISTRICT SECTION 1 USE REGULATIONS BY ADDING SUBSECTION (3.1) CHURCHES AND CHURCH-OPERATED INCIDENTAL/ACCESSORY FACILITIES (ON SAME SITE) AND RELIGIOUS FACILITIES TO THE COMPREHENSIVE ZONING ORDINANCE IN EFFECT FOR WARRICK COUNTY, INDIANA**

The purpose of this ordinance is to allow churches/religious facilities in a residential office zoning.

Amanda Mosiman made a motion to recommend approval to the County Commissioners of this amending ordinance. The motion was seconded by Jeff Valiant and unanimously carried.

**(6) AN ORDINANCE TO AMEND ARTICLE V SPECIAL USES SECTION 5 PROCEDURE SUBSECTION K SU-28 (HOME WORKSHOP) BY ADDING NUMBER (6) TO THE COMPREHENSIVE ZONING ORDINANCE IN EFFECT FOR WARRICK COUNTY, INDIANA**

The purpose of this ordinance is to allow an applicant to request the maximum allowed per acreage for a home workshop without having the specific layout of the building and number of employees.

Mrs. Rector said the Commissioners recommended that we advertise this. She said normally Board of Zoning Appeals applications are approved based on the application and plot plan on file. She said the application has to say the specific size of workshop they intend to have, but this Ordinance would allow the applicant to ask for the maximum building size allowed based on the parcel size. She said they may not have any intentions of building a workshop that big anytime soon, but could make their shop bigger at a later time without having to amend their application. Mrs. Rector said we have had two applications filed within the last month that did not want to do this.

Guy Gentry said the Board told them they could ask for a bigger building for future growth so they wouldn't have to come back and they chose not to.

Mrs. Rector said she can understand... her neighbor may not care if she is asking for a 2000 square foot workshop but they may care if she is asking for a 10,000 square foot workshop. She said this gives the applicant the option, they don't have to.

Attorney Doll asked what the largest building allowed would be.

Mrs. Rector said it is 10,000 square feet; it is 1,000 square feet per 1 acre. Mrs. Rector said there may be a lot of people who would object to a 10,000 square foot building. She said that is what this Ordinance does, is allow them to ask for it, but it does not make them.

Amanda Mosiman moved to recommend approval to the County Commissioners of this amending ordinance. The motion was seconded by Mike Moesner and unanimously carried.

**(7) AN ORDINANCE TO AMEND ARTICLE XXVI (B) OUTDOOR ADVERTISING DISPLAYS/OFF-PREMISE SIGNS/BILLBOARDS TABLE D OF THE COMPREHENSIVE ZONING ORDINANCE IN EFFECT FOR WARRICK COUNTY, INDIANA**

The purpose of this ordinance is to allow off-premise signs within a building setback line as ruled by Plan Commission and corrects error in table.

Mrs. Rector said the table stated table A and it should have stated table B. She said the Board ruled months ago to allow this so this just brings it into compliance.

Mike Moesner made a motion to recommend approval to the

County Commissioners of this amending ordinance. The motion was seconded by Brad Overton and unanimously carried.

**(8) AN ORDINANCE TO AMEND ARTICLE XXVI (A) ON PREMISE SIGNS SECTION 8 PERMITTED USES BY DISTRICT SUBSECTION C TO THE COMPREHENSIVE ZONING ORDINANCE IN EFFECT FOR WARRICK COUNTY, INDIANA**

The purpose of this ordinance is to allow on-premise signs within the building setback line as ruled by Plan Commission.

Brad Overton made a motion to recommend approval to the County Commissioners of this amending ordinance. The motion was seconded by Jeff Willis and unanimously carried.

**(9) AN ORDINANCE TO ADD ARTICLE XXV (A) COMMITMENTS; ENFORCEMENT TO THE COMPREHENSIVE ZONING ORDINANCE IN EFFECT FOR WARRICK COUNTY, INDIANA**

The purpose of this ordinance is to incorporate Indiana Code on commitments in rezonings, primary plat approval, plat vacations, special uses and variances.

Mrs. Rector said this is the state statute that she typed word for word.

Attorney Doll asked if the Board like the idea of doing it that way or would they rather say that they adopted 36-7-4-1015 as part of their ordinance. He said he was worried that since this new

ordinance is so technical the legislature has the tendency to tinker with it a year or two down the road, and he thinks this may undergo some changes. He said if they adopt it by reference, if the legislature changes, they have automatically changed as well.

Mrs. Rector said she prefers to have it in the ordinance.

Mike Moesner asked how the Board knows when changes have been made to the ordinances, and whose responsibility is it to find out.

Jeff Willis said the concern he has is if they adopt this versus having it referenced, if this becomes different in some areas where they don't overlap, will it cause more gray areas.

Attorney Doll said the state statute trumps their ordinances.

Mrs. Rector said they are the ones who have to deal with it every day and she prefers to have it in front of her. She said if she is in a site review meeting she wants to be able to open up her ordinances and read it to them. She said she doesn't want to have to send people over to the Clerk's office to look at the book like some offices do; she thinks they should be as helpful as they can. Mrs. Rector added that every year the codes go to the House and they should be keeping track of those.

Brad Overton made a motion to recommend approval to the County Commissioners of this amending ordinance. The motion was seconded by Mike Moesner and unanimously carried.

#### **ATTORNEY BUSINESS:**

Attorney Doll stated there was a bill going to the Senate and House saying that no one could record a deed unless it was reviewed and approved by the zoning office.

Mike Moesner asked if that would be a lot more work.

Mrs. Rector said it would be a lot more work.

Amanda Mosiman stated they would need to have one person just doing that.

Mike Moesner asked what they are trying to do by passing that bill.

Mrs. Rector stated it was to keep people from dividing property illegally.

Attorney Doll said it is to keep people from just deeding it versus applying for a minor subdivision or a parcelization because it is not caught for tax records and somebody might be having a new structure on the property and not paying taxes.

Guy Gentry asked how many more ordinances we need to look at. He said we have talked about domesticated animals and wineries.

Amanda Mosiman said which would change the livestock definition under Indiana code.

Mrs. Rector said they haven't figured out wineries yet, and we need to follow Indiana Code. She added she doesn't know what is going on but everybody wants chickens now.

Mike Moesner asked if there were a certain number of chickens where it is no longer a hobby but a business.

The President said they could use it for tax purposes for certain livestock.

Amanda Mosiman said yes, there is a number, what that number is depends on if they are confined feeding, or if they under the home based spender law for farmers markets, you can now sell poultry in farmers markets if you process less than 1000 birds. She said you may have more than 1000 birds but still only processing less than 1000 a year. She said you can sell poultry at the farmers market, frozen at the point of sale, and home butcher it basically, it doesn't have to go through a USDA thing, if you are processing less than 1000 birds a year.

Attorney Doll stated it seemed to him that they are going to open Pandora's Box up here, if somebody goes into Lakeridge Crossing and decides they are going to start growing 1000 chickens in their backyard...

Amanda Mosiman said, your ordinance as you said it, is whatever you guys want.

Attorney Doll said he understood, he said you need some sort of limitations.

Mike Moesner stated he thought 20 to 50 chickens is one thing but 500 chickens can be a nuisance.

Mrs. Rector stated that we could be stricter. She added that in the ordinance, to clear this up, you could say no more than 5 chickens.

Mike Moesner said his niece is raising chickens to butcher for her own use and some other people that would want them, but they have them in little 10' by 10' movable things that they move in their yard every day.

Amanda Mosiman added that those are chicken tractors.

Mike Moesner said they can handle about 40 chickens in a 10' by 10' area, but they are only in them for eight weeks. He said from the time they receive baby chicks a day old, eight weeks later they are ready to be butchered.

Discussion ensued about the chickens.

Attorney Doll asked about free range chickens.



Amanda Mosiman stated that is different and would be a disease issue. She said we can control that in our ordinance.

Mike Moesner stated that what he was getting at with the 10' by 10' pens is that you don't even know that they are there. He said you move them and you cannot hear anything. He said they are not permanent buildings; they are not taxable because they are mobile.

Mrs. Rector asked about a gentleman on Oak Grove Road with loose chickens, was that going to be acceptable.

Mike Moesner said that would be a nuisance because if they are free range, then they can run across the road and get run over. He said to him that is the difference, if they are free range. He said 5 chickens could be a nuisance in that case.

Attorney Doll asked if they were going to let them in residential areas.

Mike Moesner said that these are the things that they need to hear what other counties are doing.

Amanda Mosiman said she could find him plenty of information on the topic. She added there are a lot of cities that have went with a backyard chicken rule, urban chickens. She said they have to be enclosed, and it goes by the State Board of Animal Health. She said they have to have a foot of space at this age, or half a foot when they are chick size, and they grow, and that will depend on the poultry size. She added that's all animal health care standards that revert back to the State Board of Animal Health.

Mrs. Rector asked Amanda Mosiman to gather the information and they will work on it together.

#### **EXECUTIVE DIRECTOR BUSINESS:**

Mrs. Rector said they have a complaint filed on a house on Acorn Drive. She said it caught on fire three years ago, the owner is gone, and all of the neighbors are complaining. Mrs. Rector said she sent out an email to all of the Commissioners and copied the Board in it. She asked who does what in these cases. She said the Planning Commission is not a body that condemns homes; we do not have the expertise to do it. Mrs. Rector said the Commissioners adopted an unsafe building ordinance a few years ago; however they never could get the county council to fund it so they repealed it. She said it was sold on tax sale, the company who bought it never has taken deed to it and it is going to come up on tax sale again in May. Mrs. Rector said she does not know what to do with it.

Attorney Doll said the only thing they could do with it under the current ordinance is if they feel it is a public nuisance pursuant to our definition to that, they could file a complaint. He said there is an unsafe building law, it's in IC36-7-9-1, it sets forth a whole procedure of unsafe buildings, determining that a building is unsafe, what to do, and it requires our County Commissioners to adopt by reference that state statute as it's county ordinance. Attorney Doll

added it designates the enforcement office and there is a hearing process. He said right now Warrick County does not have an unsafe building statute, there is this one in Indiana, which is sort of a one size fits all, that the legislature has passed and it gives the counties the option to incorporate it.

Mike Moesner asked what happens when there is a natural disaster that tears up homes in the county.

Attorney Doll said he thinks that the Commissioners or Hearing Board probably wouldn't find it to be an unsafe building if it is being torn down or repaired.

Mike Moesner asked who determines that if somebody is living there, that it is unsafe.

Mrs. Rector said the Health Department can declare it an unsafe building to live in, but they can't say you have to tear it down; they can only say you can't live in it until it is fixed up.

Amanda Mosiman asked if that was by building standards or public health standards.

Mrs. Rector said it was public health standards. She said she didn't know what the building inspector could do. She said it goes on tax sale this May.

Discussion ensued about tax sales.

Mrs. Rector said the woman who owned it has been gone for 3 years and she is still the owner of record. She said it looks bad.

Attorney Doll said they could allege that it is a public nuisance. He said that is what they did with Mr. Rainey.

Jeff Willis asked if that is what happened with the house that burnt down in Newburgh.

The President said they did not do anything with that, the insurance company took care of it.

Mrs. Rector said she doesn't know what happened with this one. She asked if they wanted her to follow through because this stuff is inside the house, the outside has some junk.

Discussion ensued about contacting the Commissioners and other cases where they were in a subdivision with a homeowners association.

Mrs. Rector asked the Board if she should just forward this issue to the Commissioners and see if they can do anything.

Attorney Doll said he didn't think they could without the state statute.

Mrs. Rector said she needs to do something so she can tell these people that she is doing something.

Attorney Doll said ok, see what the Commissioners can do.

Ascertaining no other business, Mike Moesner made a motion to adjourn the meeting. Brad Overton seconded, and the motion was unanimously carried, the meeting adjourned at 7:55 p.m.

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Guy Gentry, President

ATTEST:

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Sherri Rector, Executive Director